

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE TRUSTEES OF THE UNITED
TEAMSTER FUND, THE TRUSTEES OF
THE UNITED TEAMSTER PENSION FUND
"A," and THE TRUSTEES OF THE UNITED
TEAMSTER PENSION FUND "D,"

Plaintiffs,

**MEMORANDUM &
ORDER**

07 CV 1425 (SJ)(RML)

-against-

J.B. TEA MUFFLERS, INC. and ROBERT
FISCHER,

Defendants.

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A P P E A R A N C E S

DEALY & SILBERSTEIN, LLP

225 Broadway

Suite 1405

New York, New York 10007

By: Milo S. Silberstein, Esq.

Attorney for Plaintiff

JOHNSON, Senior District Judge:

The Trustees of the United Teamster Fund, the Trustees of the United Teamster Pension Fund "A," and the Trustees of the United Teamster Pension Fund "D" (collectively, "Plaintiffs") brought this action, pursuant to § 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132 and 1145, and the Labor Management Relations Act of 1947 ("LMRA") § 185(a), against defendants

J.B. Tea Mufflers, Inc. ("J.B. Tea") and Robert Fischer, principal and corporate officer of J.B. Tea (collectively, "Defendants"). Compl., ¶¶ 1,7. The Complaint alleges that Defendants failed to remit contributions to the Funds as required pursuant to a Collective Bargaining Agreement ("CBA"). Defendants, who are not represented by counsel in this matter, never responded to the Complaint and failed to appear before the Court in connection with this case. The matter was referred to arbitration on May 15, 2007. However, no date was set for such proceedings, as Plaintiffs filed an Application for a Certificate of Default on that same day. Still not having received any correspondence from the Defendants, the Certificate of Default was entered on October 3, 2007.

Subsequently, on October 5, 2007, the Court referred this matter to United States Magistrate Judge Robert M. Levy for a Report and Recommendation on the question of damages. On April 23, 2008, Magistrate Judge Levy issued a Report and Recommendation (the "Report"), recommending that this Court award Plaintiffs a total of \$15,968.45, in addition to sixteen percent interest per annum on unpaid contributions of \$7,695. Report, p. 10. The proposed award includes principal contributions, delinquency charges, liquidated damages, attorney's fees, and costs. Id.

A district court judge may designate a magistrate to hear and determine certain motions pending before the Court and to submit to the Court proposed findings of fact and a recommendation as to the disposition of the motion. See 28 U.S.C. § 636(b)(1). Within ten days of service of the recommendation, any party may file written objections to the magistrate's report. See id. Upon *de novo* review of those portions of the record

to which objections were made, the district court judge may affirm or reject the recommendations. See id.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. See Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections may waive the right to appeal this Court's Order. See 28 U.S.C. § 636(b)(1); Small v. Sec'y of Health and Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

In this case, objections to Magistrate Judge Levy's recommendations were due within 10 business days of receipt of the April 23, 2008 decision, or at the latest by May 8, 2008. No objections to the Report were filed with this Court. Upon review of the recommendations, this Court adopts and affirms Magistrate Judge Levy's Report in its entirety.

SO ORDERED.

Dated: Brooklyn, New York
May 14, 2008

s/Hon. Sterling Johnson, Jr.

U.S.D.J.